

## COAL RULE REVISIONS

The department brought to the May Land Board several proposed revisions to state land coal leasing rules. Per the Board's authorization, the department published the proposed revisions for public review. The comment period ran from May 8, 2008 through June 5, 2008. No oral or written comments were received. The department also conducted a public hearing on May 28, 2008. No one appeared to offer any comments.

The department therefore requests Land Board approval to implement the coal rule revisions as proposed.

BEFORE THE BOARD OF LAND COMMISSIONERS AND  
THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.25.301,	)	ON PROPOSED AMENDMENT
36.25.303, 36.25.304, 36.25.310,	)	
36.25.315, and 36.25.321 regarding	)	
coal leasing rules	)	

To: All Concerned Persons

1. On May 28, 2008, at 1:00 p.m. the Department of Natural Resources and Conservation will hold a public hearing in the third floor DNRC Director's Conference Room, 1625 11th Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 21, 2008, to advise us of the nature of the accommodation that you need. Please contact Monte Mason, 1625 11th Avenue, Helena, MT 59620; telephone (406) 444-3843; fax (406) 444-2684; or e-mail mmason@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

36.25.301 DEFINITIONS (1) When used herein, unless a different meaning clearly appears from the context:

(a) through (e) remain the same.

~~(f) "Foreign interests" means states of governmental subdivisions of states foreign to the United States, other than Canada or Mexico; business entities organized under the laws of any state foreign to the United States, other than Canada or Mexico; and persons who are citizens of any state foreign to the United States, other than Canada or Mexico;~~

(f) "Interests foreign to the United States" means countries, states, or governmental subdivisions other than those within the United States of America;

(g) through (k) remain the same.

(l) "Value" means the contract sales price as defined in 15-35-102, MCA.

AUTH: 77-3-303, MCA

IMP: 77-3-303, 77-3-305, MCA

REASONABLE NECESSITY: The amended definition of "interests foreign" is reasonably necessary so as to keep the term consistent with the provision of section 77-3-305, MCA. Section 77-3-305, MCA, allows foreign citizens and business

entities to acquire state coal leases, provided that their country of origin allows reciprocal privileges to U.S. citizens.

36.25.303 WHO MAY LEASE FOR COAL -- QUALIFIED LESSEES

(1) Any person, qualified under the constitution and laws of the state of Montana, ~~except corporations, the majority of the stock of which is controlled by foreign interests,~~ may lease state lands for coal purposes provided that:

(a) and (b) remain the same.

(c) the applicant, if a natural person, has reached the age of 18 years; and

(d) no citizen of a foreign country is eligible to obtain and hold a state coal lease unless the citizen's country provides for similar or like privileges to citizens of the United States. Likewise, no partnership, corporation, association, or other legal entity controlled by interests foreign to the United States is eligible to obtain and hold a state coal lease unless the entity's country provides for similar or like privileges to citizens of the United States.

(2) remains the same.

AUTH: 77-3-303, MCA

IMP: 77-3-303, 77-3-305, MCA

REASONABLE NECESSITY: The amendment to the definition of "qualified lessees" is reasonably necessary so as to be consistent with the provisions of section 77-3-305, MCA, which allows foreign citizens and business entities to acquire state coal leases, provided that their country of origin allows reciprocal privileges to U.S. citizens.

36.25.304 PROCEDURES FOR ISSUE OF LEASE

(1) through (3) remain the same.

(4) An application to have a tract offered for lease may be made at any time during the year on a form provided by the department; :

(a) ~~Such~~ such application shall contain the information called for therein, including an adequate and sufficient description of the lands sought to be leased; ; and

(b) ~~Such~~ such application shall be accompanied by a ~~\$10.00~~ \$50.00 application fee. Applications not accompanied by the application fee will not be considered.

(5) remains the same.

(6) When sufficient applications have been received to warrant a sale, or at the director's discretion, a lease sale will be announced.

(a) Notice of a lease sale shall be posted on the department's web site and published given by publication in a trade journal of general circulation in the coal mining industry or in the major newspapers of general circulation within Montana each week for four weeks preceding the date of sale. The notice shall identify the country or countries within which ~~contain a list of the tracts~~ are being offered for lease, state the date of the lease sale, provide instructions on how to obtain detailed information from the department on the specific tracts to be offered, and describe the

bidding requirements and procedures and ~~contain other information as is appropriate.~~

(b) The department shall maintain a master mailing list of prospective coal lessees who request, in writing, that their names be placed on such list; and concurrently with the publication of the notice of sale in the newspapers or trade journal, the board shall mail or e-mail to each addressee on the master mailing list a copy of the notice of sale. However, such mailing shall not be deemed a legal prerequisite to a valid sale. Furthermore, the board shall have no liability to any person who may be inadvertently omitted in the mailing of such additional notices.

(c) through (7) remain the same.

(8) Subject to the board's right to reject any and all bids:

(a) ~~When~~ when bidding is on a cash bonus basis, the lease will be awarded to the qualified applicant who submits a bid of the highest cash amount per acre;

(b) ~~When~~ when bidding is on a percentage of royalty basis, the lease will be awarded to the qualified bidder who submits a bid of the largest percentage of royalty to be paid. No bid of less than ~~40%~~ ten percent of the f.o.b. price of the coal prepared for shipment excluding that amount charged by the seller to pay taxes on production will be accepted; and

(c) ~~When~~ when bidding is on a cash bonus and percentage of royalty basis the board will determine which bid is to the best advantage of the state and award the lease accordingly.

(9) through (12) remain the same.

AUTH: 77-3-303, MCA

IMP: 77-3-303, 77-3-312, MCA

REASONABLE NECESSITY: The amendment to the coal lease sale notification process is reasonably necessary to update the process to allow notification via e-mail and the department's web site, and to update the coal lease application fee so as to conform the rule to provisions of ARM 36.2.1003(11). The amendment to ARM 36.2.1003(11), which increased the application fee from \$10 to \$50, became effective November 1, 1985, and has been applied since that date.

#### 36.25.310 ROYALTIES

(1) remains the same.

(2) The fair market value of the coal shall be determined by the board in accordance with ~~15-35-109~~ 77-3-312 and 77-3-316(4), MCA. ~~This statute, in conjunction with 15-35-102(1), MCA, requires that the value of the coal for royalty purposes shall be either the price of the coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department of revenue under 15-35-107, MCA, which authorizes the department of revenue to impute a value to the coal which approximates market value f.o.b. mine, under certain conditions including utilization of the coal by the operator and sales under a contract which is not an arm's length agreement.~~

(3) On or before the last day of each month, every holder of a producing coal lease shall make a report to the department, on a form the department prescribes,

showing the number of tons mined during the preceding calendar month, the price obtained therefore at the mine, the total amount of all sales, and any additional information required by the department. The report shall be signed by the lessee or some responsible person having knowledge of the facts reported and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

(4) remains the same.

AUTH: 77-3-303, MCA

IMP: 77-3-312, 77-3-316, 77-3-317, MCA

REASONABLE NECESSITY: The amendment to coal royalty valuation is reasonably necessary as to delete references to repealed statutes and to conform the rule to the provisions of sections 77-3-312, 77-3-316, and 77-3-317, MCA.

36.25.315 FORFEITURE, CANCELLATION, AND TERMINATION OF LEASES

(1) remains the same.

~~(2) Upon a finding at a hearing held in accordance with the Montana Administrative Procedure Act, that a lessee has contracted with any foreign interest for the sale of coal, the lease shall automatically terminate.~~

AUTH: 77-3-303, MCA

IMP: 77-3-303, MCA

REASONABLE NECESSITY: The amendment to ARM 36.25.315(2) is reasonably necessary so as to eliminate forfeiture of the lease solely due to a sale of coal to any foreign purchaser.

36.25.321 FEES (1) The department shall assess the following fees:

(1) ~~(a) for application for coal lease - \$10.00~~ \$50.00;

~~(2) (b) for issuance of each coal lease - \$25.00; and~~

~~(3) (c) for filing each assignment affecting a coal lease, or interest therein, of whatever nature - \$10.00; .~~

~~(4) for royalties on coal mined for private use not exceeding 30 tons of 2,000 pounds - \$5.00.~~

AUTH: 77-3-303, MCA

IMP: 77-3-303, MCA

REASONABLE NECESSITY: The amendment to ARM 36.25.321 is reasonably necessary so as to eliminate coal leases for minor private use and to update the application fee so as to conform to the provisions of ARM 36.2.1003(11). The amendment to ARM 36.2.1003(11), which increased the application fee from \$10 to \$50, became effective November 1, 1985, and has been applied since that date.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment either orally or in writing at the public hearing. Written data, views, or arguments may also be submitted to Monte Mason, 1625 11th Avenue, Helena, MT 59620; telephone (406) 444-3843; e-mail [mmason@mt.gov](mailto:mmason@mt.gov). Comments must be received no later than 5:00 p.m. June 5, 2008.

5. Monte Mason, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be sent or delivered to the contact person in (4) above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

#### DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton  
MARY SEXTON  
Director  
Natural Resources and Conservation

/s/ Tommy H. Butler  
TOMMY H. BUTLER  
Rule Reviewer

Certified to the Secretary of State April 28, 2008.